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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,048	10/22/2003	Christopher A. Dykes	OM126	6116
26009	7590	02/08/2005		
ROGER M. RATHBUN 13 MARGARITA COURT HILTON HEAD ISLAND, SC 29926			EXAMINER GIBSON, ROY DEAN	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,048

Applicant(s)

DYKES ET AL.

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/7/2004
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "upper and lower housing" in line 2. There is insufficient antecedent basis for this limitation in the claim. The examiner suggests claim 3 should depend from claim 2 to correct this.

Claim 5 recites the limitation "said lens" in line 1. There is insufficient antecedent basis for this limitation in the claim. The examiner suggests claim 5 should depend from claim 4 to correct this.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finny (6,413,205) in view of Chang (4,101,957) and further in view of Scholz (5,820,253).

As to claims 1, 8 and 16-17, Finny discloses an infant warming apparatus and its method of use comprising:

a base having an infant platform on which an infant is adapted to be positioned, a overhead housing, a procedure light having a light source, said procedure light being recessed within the overhead housing and a radiant heater to direct infrared radiation toward the infant platform (Figure 1 and col. 2, lines 10-49). But, Finny fails to disclose the light has omni-directional movement as it directs a beam of light from said light source toward the infant platform, or a control handle extending downwardly from the procedure light so as to be accessible to a person to adjust the direction of the beam of light from said procedure light. However, Chang discloses a light for medical use with omni-directional movement but also lacks a control handle for adjusting the direction of the beam of the light (Figure 1 and col. 1, lines 5-11, col. 3, line 30-col. 4, line 42). However, Scholz discloses a light for medical use with such a handle for adjusting the direction of the beam of the light (Figure 1 and col. 3, line 63-col. 4, line 45). Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Finny, as taught by Chang, to provide a light mounted to the overhead housing and recessed within the overhead housing, to permit easy adjustment of the light toward the patient and to further modifying the light with a handle, as taught by Scholz, as required for directing the light for examination purposes.

As to claims 4, 7, 14, 15 and 19, Chang further discloses the procedure includes a lens (5) which is movable with respect to the light source (17) to focus the beam of light directed from the light source toward the infant platform and a controllable iris (14) to control the size of the beam from the procedure light (Figure 1 and col. 3, lines 30-61).

Further to claims 9, 12-13 and 18, Finny discloses a switch (30a) for the procedure light but fails to disclose the switch is located on a control handle (col. 2, lines 42-46). However, the location of the switch is merely a design choice and an alternative location on the panel of the infant warmer is suggested by the applicant in the Specification on page 7, in the second paragraph, thus an indication of the lack of criticality of the location.

Further to claims 10-11 and 20, Chang discloses a filter in conjunction with a spectral correction coating on the back side of the front covering glass which controls the light beam spectral color temperature and, therefore, a predetermined wavelength band which inherently provides phototherapy to an infant (Abstract and col. 4, lines 4-65).

Claims 2-3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finny or Chang or Scholz as applied to claim 1 above, and further in view of Mendeski (4,646,214). None of the referenced sighted above disclose the details of the housing and the lens holder. However, the examiner maintains it would have been an

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obvious matter of design choice to a person of ordinary skill in the art to configure the housing and mount the lens as required for its function because Applicant has not disclosed that such a design provides an advantage, is used for a particular purpose, or solves a stated problem. For example, Mendeski (4,646,214) suggests such a configuration for a swivel version of a coaxial lighting assembly with the features of these claims.

Conclusion

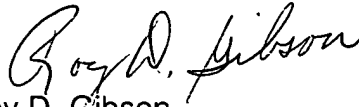
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Franz et al. (5,830,123) disclose a pivotable irradiating device for a person lying on a surface; and First Gulf International disclose a data sheet with a copyright dating to 2001 of an infant warmer with a separate spotlight for phototherapy mounted adjacent the heater source.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on M-F, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Roy D. Gibson
Primary Examiner
Art Unit 3739

February 1, 2005